

AMENDED IN ASSEMBLY AUGUST 29, 2016

AMENDED IN ASSEMBLY AUGUST 19, 2016

AMENDED IN ASSEMBLY JUNE 20, 2016

AMENDED IN ASSEMBLY JUNE 14, 2016

AMENDED IN SENATE APRIL 18, 2016

AMENDED IN SENATE MARCH 29, 2016

SENATE BILL

No. 1241

Introduced by Senator Wieckowski

February 18, 2016

An act to add ~~Section 1799.208 to the Civil Code, and to add~~ Section 925 to the Labor Code, relating to *employment* contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1241, as amended, Wieckowski. ~~Contracts.~~ *Employment contracts: adjudication: choice of law and forum.*

~~Existing law, the Consumer Contract Awareness Act of 1990, defines a consumer contract as a writing prepared by a seller that provides for the sale or lease of goods or services or the extension of credit, as specified, for personal, family, or household purposes, among other provisions. The act requires a seller, which includes financial institutions, to deliver a copy of a consumer contract to the consumer at the time the contract is signed, and it prohibits the waiver of any provisions of the act.~~

Existing law regulates the terms and conditions of labor contracts. Existing law prohibits an employer from requiring an employee or applicant for employment to agree, in writing, to any term or condition

that is known by the employer to be illegal. Existing law creates the Division of Labor Standards Enforcement, which is under the direction of the Labor Commissioner, and generally commits to the commissioner the authority and responsibility for the enforcement of employment laws.

~~This bill would prohibit, bill, for contracts entered into, modified, or extended on or after January 1, 2017, a seller would prohibit an employer from requiring a consumer, as a condition of entering into a contract, an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would require the consumer to adjudicate outside of California a claim arising in California or deprive the consumer employee of the substantive protection of California law with respect to a controversy arising in California. The bill would make any choice of venue or choice of law provision of a contract that violates these prohibitions voidable, upon request of a consumer who primarily resides in California, if the provision would violate either of those prohibitions as provided. the employee and would require a dispute over a voided provision to be adjudicated in California under California law. The bill would make specify that injunctive relief is available and would authorize a court to award a consumer reasonable attorney's fees. The bill would provide that adjudication includes litigation and arbitration for purposes of these provisions. The bill would except from these provisions a contract with an employee who was represented by legal counsel, as specified.~~

~~This bill also would create an analogous set of rights, prohibitions, and requirements, as described above, in connection with employment contracts for an employee who primarily resides and works in California. The bill would except from these employment provisions a contract with an employee who is represented by legal counsel, as specified, or a talent agency, as defined.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 1799.208 is added to the Civil Code, to~~
- 2 ~~read:~~
- 3 ~~1799.208.—(a) A seller shall not require a consumer, as a~~
- 4 ~~condition of entering into a contract, to agree to a provision that~~
- 5 ~~would do either of the following:~~

1 ~~(1) Require the consumer to adjudicate outside of California a~~
2 ~~claim arising in California.~~

3 ~~(2) Deprive the consumer of the protection of California law~~
4 ~~with respect to a controversy arising in California.~~

5 ~~(b) Notwithstanding any other law, any choice of venue or~~
6 ~~choice of law provision is voidable, upon request of a consumer~~
7 ~~who primarily resides in California, if the provision would do~~
8 ~~either of the following:~~

9 ~~(1) Require the consumer to adjudicate outside of California a~~
10 ~~claim arising in California.~~

11 ~~(2) Deprive the consumer of the protection of California law~~
12 ~~with respect to a controversy arising in California.~~

13 ~~(c) If a provision is rendered void at the request of the consumer,~~
14 ~~as described in subdivision (b), the matter shall be adjudicated in~~
15 ~~California and California law shall govern the dispute.~~

16 ~~(d) In addition to injunctive relief and any other remedies~~
17 ~~available, a court may award a consumer who is enforcing his or~~
18 ~~her rights under this section reasonable attorney's fees.~~

19 ~~(e) For purposes of this section, adjudication includes litigation~~
20 ~~and arbitration.~~

21 ~~(f) This section shall apply to a contract entered into, modified,~~
22 ~~or extended on or after January 1, 2017.~~

23 ~~SEC. 2.~~

24 *SECTION 1.* Section 925 is added to the Labor Code, to read:

25 925. (a) An employer shall not require an employee ~~or job~~
26 ~~applicant, who primarily resides and works in California,~~ as a
27 condition of employment, to agree to a provision that would do
28 either of the following:

29 (1) Require the employee to adjudicate outside of California a
30 claim arising in California.

31 (2) Deprive the employee of the *substantive* protection of
32 California law with respect to a controversy arising in California.

33 ~~(b) Notwithstanding any other law, any choice of venue or~~
34 ~~choice of law provision is voidable, upon request of an employee~~
35 ~~who primarily resides and works in California, if the provision~~
36 ~~would do either of the following:~~

37 ~~(1) Require the employee to adjudicate outside of California a~~
38 ~~claim arising in California.~~

39 ~~(2) Deprive the employee of the protection of California law~~
40 ~~with respect to a controversy arising in California.~~

1 ~~(e) If a provision is rendered void at the request of the employee,~~
2 ~~as described in subdivision (b), the matter shall be adjudicated in~~
3 ~~California and California law shall govern the dispute.~~

4 *(b) Any provision of a contract that violates subdivision (a) is*
5 *voidable by the employee, and if a provision is rendered void at*
6 *the request of the employee, the matter shall be adjudicated in*
7 *California and California law shall govern the dispute.*

8 ~~(d)~~

9 *(c) In addition to injunctive relief and any other remedies*
10 *available, a court may award an employee who is enforcing his or*
11 *her rights under this section reasonable attorney's fees.*

12 ~~(e)~~

13 *(d) For purposes of this section, adjudication includes litigation*
14 *and arbitration.*

15 ~~(f)~~

16 *(e) This section shall not apply to a contract with an employee*
17 *who is in fact individually represented by legal counsel in*
18 *negotiating the terms of an agreement to designate either the venue*
19 *or forum in which a controversy arising from the employment*
20 *contract may be adjudicated or the choice of law to be applied.*

21 ~~(g) This section shall not apply to a contract for which the~~
22 ~~employee was represented by a talent agency, as defined in~~
23 ~~subdivision (a) of Section 1700.4.~~

24 ~~(h)~~

25 *(f) This section shall apply to a contract entered into, modified,*
26 *or extended on or after January 1, 2017.*